

REMARKS

Claims 29 to 31 are added, and therefore claims 12 to 26 and 29 to 31 are currently pending in the present application.

In view of this response, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph three (3) of the Office Action, claims 12 to 26 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,691,034 (the “Patera” reference).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 12 relates to a method for determining an accident risk of a first object with at least one second object, including the features of *determining the accident risk as a function of a collision probability and a hazard probability of the at least one second object in a predefined region, and determining the collision probability and the hazard probability as a function of motions of the first and at least one second object.*

In contrast, the “Patera” reference is limited to “collision prediction and avoidance of airborne and spaceborne moving vehicles.” (The “Patera” reference, column 1 lines 12 to

13.) Furthermore, the “Patera” reference does not identically disclose (or even suggest) the feature of determining the accident risk *as a function of a collision probability and a hazard probability* of the at least one second object in a predefined region.

The “Patera” reference merely predicts if there will be a collision between objects based on trajectories and provides maneuvering instructions to avoid such a predicted collision. It is provided that “the method determines risk of a potential collision between a subject object and a target object, and determines an optimum maneuver to avoid potential collision. The subject object may be an aircraft, an orbiting spacecraft, a launch spacecraft, or a free space traveling spacecraft.” (The “Patera” reference, column 4, lines 17 to 22.) In particular, the “Patera” reference does not identically disclose (nor even suggest) the feature of determining the accident risk as a function of a hazard probability, as provided for in the context of the claimed subject matter. The only probability calculated, is the probability of collision. In this regard, a hazard is further described at page 2, lines 1 to 5, page 6, lines 31 to 33, and page 16, lines 17 to 23, of the Substitute Specification.

Thus, the “Patera” reference does not identically disclose (or even suggest) the feature of a collision probability and a hazard probability. As a result, the “Patera” reference cannot identically disclose (or even suggest) the features of determining the accident risk as a function of a collision probability and a hazard probability of the at least one second object in a predefined region, and determining the collision probability and the hazard probability as a function of motions of the first and at least one second object, as provided for in the context of claim 12.

Accordingly, it is respectfully submitted that claim 12 is allowable, as are its dependent claims 13 to 26.

New claims 29 to 31 do not add any new matter and are supported by the present application, including the specification. New claims 29 to 31 depend from claim 12 and are therefore allowable at least for the same reasons as claim 12.

Withdrawal of the rejections of the claims is therefore respectfully requested.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 6/10/2008

By: 

Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

leg no.
33,865
Adrian C.
JEDITCHA)